

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK

---

NEW YORK STATE ELECTRIC & GAS  
CORPORATION,

Plaintiff,

Civ. Action No.  
3:03-CV-0438 (DEP)

v.

FIRSTENERGY CORPORATION,

Defendant/Third-Party  
Plaintiff,

v.

I.D. BOOTH, ITHACA CITY SCHOOL  
DISTRICT, CITY OF ITHACA, NEW YORK,  
and CITY OF ONEONTA, NEW YORK,

Third-Party Defendants.

---

APPEARANCES:

OF COUNSEL:

FOR PLAINTIFF:

DICKSTEIN SHAPIRO MORIN  
& OSHINSKY, LLP  
1825 Eye Street NW  
Washington, D.C. 20006-5403

DAVID L. ELKIND, ESQ.  
ANDREW C. COOPER, ESQ.  
KEISHA A. GARY, ESQ.  
GEOFFREY M. LONG, ESQ.

HINMAN, HOWARD LAW FIRM  
P.O. Box 5250  
80 Exchange Street  
700 Security Mutual Building  
Binghamton, NY 13902-5250

JAMES S. GLEASON, ESQ.

FOR DEFENDANT NYSEG:

SAUL EWING LLP  
1500 Market Street, 38th Floor  
Philadelphia, PA 19102

JOHN F. STOVIK, ESQ.  
JANE KOZINSKI, ESQ.  
CHRISTINE M. PICKEL, ESQ.  
CHRISTINA M. RIGGS, ESQ.

COSTELLO, COONEY LAW FIRM PAUL G. FERRARA, ESQ.  
Salina Place  
205 South Salina Street  
4th Floor  
Syracuse, NY 13202-1307

FOR THIRD-PARTY DEFENDANT  
I.D. BOOTH, INC.

DAVIDSON, O'MARA LAW FIRM DONALD S. THOMSON, ESQ.  
243 Lake Street  
Elmira, NY 14901

FOR THIRD-PARTY DEFENDANT  
ITHACA CITY SCHOOL DISTRICT:

BOND, SCHOENECK LAW FIRM THOMAS R. SMITH, ESQ.  
One Lincoln Center  
Syracuse, NY 13202-1355

FOR THIRD-PARTY DEFENDANTS  
CITY OF ITHACA AND ONEONTA:

MENTER, RUDIN LAW FIRM  
308 Maltbie Street  
Suite 200  
Syracuse, NY 13204-1498

JULIAN B. MODESTI, ESQ.  
THOMAS J. FUCILLO, ESQ.

DAVID E. PEEBLES  
U.S. MAGISTRATE JUDGE

ORDER

Currently pending before the court in connection with this action are several summary judgment motions brought by the parties addressing various discrete issues. Oral argument was conducted with respect to the pending motions on August 25, 2010, and bench rulings were issued with regard to certain of the motions at the close of that hearing.

Based upon the foregoing and the court's bench decision, which is incorporated herein by reference, it is hereby

ORDERED as follows:

- 1) The motion of New York State Electric & Gas Corporation ("NYSEG") for partial summary judgment on the issue of compliance with the National Contingency Plan (Dkt. No. 224) is DENIED.
- 2) The motion of defendant FirstEnergy Corp. ("FirstEnergy") for partial summary judgment dismissing plaintiff's claims with regard to four of the manufactured gas plant ("MGP") sites in issue in this case based upon the governing statute of limitations (Dkt. No. 233) is DENIED.
- 3) Plaintiff NYSEG's motion for partial summary judgment precluding FirstEnergy from re-litigating issues related to veil-piercing

and corporate successorship (Dkt. No. 225) is DENIED.

4) The motion of third-party defendant City of Ithaca for summary judgment dismissing FirstEnergy's claims against it based upon the third party defense and/or innocent landowner defense (Dkt. No. 236) is DENIED.

5) The motion of third-party defendant City of Oneonta for summary judgment dismissing FirstEnergy's claims against it based upon the third party defense and/or innocent landowner defense (Dkt. No. 237) is DENIED.

6) The motion of third-party defendant Ithaca City School District for summary judgment dismissing FirstEnergy's claims against it based upon the third party defense and/or innocent landowner defense (Dkt. No. 238) is deemed withdrawn, without prejudice to refiling, based upon a tentative settlement of claims between that third-party defendant and FirstEnergy.

7) Decision is reserved with regard to defendant FirstEnergy's motion for partial summary judgment dismissing portions of plaintiff's

claims under the Comprehensive Environmental Response,  
Compensation and Liability Act of 1980 ("CERCLA") (Dkt. No. 232).

A handwritten signature in black ink, appearing to read "David E. Peebles", written over a horizontal line.

David E. Peebles  
U.S. Magistrate Judge

Dated: August 26, 2010  
Syracuse, NY